

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

In re: Shale Oil Antitrust Litigation

This Document Relates to:

ALL ACTIONS

Case No. 1:24-md-03119-MLG-LF

Judge Matthew L. Garcia

**JOINT NOTICE OF DISPUTE RE: DEADLINE FOR DEFENDANTS TO SERVE
RESPONSES AND OBJECTIONS TO PLAINTIFFS' EARLY DISCOVERY REQUESTS
FOR GOVERNMENT PRODUCTIONS**

Plaintiffs and Defendants jointly submit this Notice respectfully requesting that the Court resolve a dispute regarding when Defendants are required to serve responses and objections to Requests for Production, seeking documents that Defendants previously produced to government regulators. Plaintiffs' position is that—based on the Court's comments made at the initial hearing and in the Initial Scheduling Order (ECF No. 82)—Defendants are required to serve responses and objections at this time. Defendants' position is that—pursuant to the Court's Initial Scheduling Order—their responses and objections are not due unless and until 30 days after the Court denies their anticipated motions to dismiss.

On October 18, 2024, the parties submitted to the Court their Joint Status Report and Provisional Discovery Plan, stipulating as follows regarding the "Timing to Issue and Respond to Request[s] for Production": "The parties agree that Requests for Production may be served in advance of any motion to dismiss opinion, but will only be deemed served on [the] date the motion to dismiss is denied." (ECF No. 60 at 3.) Separately, Plaintiffs sought to include in the schedule a date by which Defendants would produce all non-duplicative documents they had previously produced to the FTC, DOJ, and/or U.S. Congressional committees "relating to recent merger

inquiries and/or allegations of collusion identified in the FTC’s complaints directed to Chevron/Hess and Exxon/Pioneer.” (*Id.* at 4.) At this point, Plaintiffs sought production of these documents informally; they had not served requests for production. Defendants objected, and Plaintiffs thereafter sought an order from the Court requiring production of the documents within 42 days of the Court’s order appointing interim co-lead class counsel. (*See* ECF No. 60-4, Ex. D to the Joint Status Report and Provisional Discovery Plan at 2-11.)

On November 6, 2024, at the initial conference, the Court heard the parties on this dispute and indicated that it would deny Plaintiffs’ request that Defendants be ordered as part of the case schedule to “produce the document productions they made to the FTC, DOJ and/or the U.S. Congress.” (*Id.* at 2.) The Court also stated that it was “not likely to make the defendants produce those documents before receiving a formal discovery request.” (Initial Conference Transcript at 57:13-68:11.)

On November 18, 2024, Plaintiffs served formal requests for production, seeking certain document productions made to government regulators, including the specific documents cited in and redacted from the FTC’s complaints. *See* Exhibits A, B (Exemplars of Plaintiffs’ Requests for Production).¹ On December 13, 2024, Defendants reached out to Plaintiffs to confirm that the parties’ stipulation on timing of service for requests for production applied to Plaintiffs’ November 18 requests. Plaintiffs explained that, in light of the Court’s guidance, they viewed the requests as formally served with responses due by December 18, 2024.² Defendants said that they viewed as controlling the Fact Discovery Schedule set out in the Joint Status Report and Provisional

¹ Plaintiffs have included as exemplars two sets of RFPs, to Defendants Pioneer Natural Resources and John Hess. Both are representative of the RFPs served on the other corporate and individual Defendants, respectively. No corporate Defendant received more Requests than Pioneer; several corporate Defendants received less.

² The parties agree that no Defendant waived any objection to Plaintiffs’ requests for production by not serving responses or objections on or before December 18, 2024.

Discovery Plan, which provides that “Responses and objections to [Requests for Production] that were served before [any Motion to Dismiss] decision (‘initial RFPs’)” are not due until “30 Days After MTD Decision (if denied).” (ECF No. 60 at 6.)

On December 20, 2024, the Court issued the Initial Scheduling Order. “[T]he Court denie[d] the plaintiffs’ request” for “‘all non-duplicative document productions [defendants] made to the FTC and DOJ, and the U.S. Congress,’” stating that “the plaintiffs may seek discovery of these documents through properly submitted requests for production and subject to the defendants’ objections.” (ECF No. 82 at 3 (quoting ECF No. 60-4 at 4).) The Court also ordered a schedule providing that “[r]esponses and objections to requests for production (RFPs) served prior to [the] Court’s order ruling on MTD” are due “30 days after Court rules on MTD.” (*Id.* at 2.) As a result, Defendants’ understanding is that their responses and objections to Plaintiffs’ early requests for production are not due until 30 days after the Court rules on Defendants’ anticipated motions to dismiss.

Plaintiffs, on the other hand, understood the Court to suggest that Plaintiffs should serve their limited requests for production and meet and confer on the scope of the production, now, bringing any dispute to the Court after that process was completed. (*See* Initial Conference Transcript, at 61:24-62:4 (The Court: “isn’t the first request for production going to be: Give us all of these documents. You’re going to object. And the first issue at our status conference is going to be this very issue? I’m just trying to head off and obviate the need to have this discussion somewhere down the road.”).)

Accordingly, the parties respectfully request that the Court resolve their dispute regarding whether Defendants are required to serve responses and objections to Plaintiffs’ document requests

at this time, or if Defendants only need to do so if the Court denies their anticipated motions to dismiss.

Dated: January 13, 2025

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